Supreme Court, U.S.
FILED
MAY 3 1991
OFFICE OF THE CLERK

No. 90-644

In The

Supreme Court of the United States

October Term, 1990

JAMES G. LEDBETTER, COMMISSIONER
GEORGIA DEPARTMENT OF HUMAN RESOURCES,

Petitioner,

v.

MARTA O. TURNER, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS

VICKY O. KIMBRELL
NANCY R. LINDBLOOM
LISA J. KRISHER
PHYLLIS J. HOLMEN
Attorneys for Respondents

Counsel of Record:
VICKY O. KIMBRELL
Box 64, Suite 1125
120 Ralph McGill Boulevard
Atlanta, Georgia 30308
Telephone: (404) 894-7707

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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GEORGIA DEPARTMENT OF HUMAN RESOURCES,

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Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

SUPPLEMENTAL BRIEF OF RESPONDENTS

This brief is submitted to supplement respondents' Brief in Opposition to the granting of certiorari in this case. It is submitted in response to the amicus briefs of the various attorneys general and the U.S. Solicitor General's office. Respondents maintain that this matter is not appropriate for Supreme Court review.[1]

[1] Neither the various attorneys general nor the U.S. Solicitor's Office argue that this Court should accept this case to consider the Eleventh Amendment issue raised by the State of Georgia and, accordingly, respondents do not address that issue here.

1. THE REMAINING RELIEF ISSUE IN THIS CASE AFFECTS A SMALL NUMBER OF GEORGIA AFDC RECIPIENTS AND A SMALL AMOUNT OF MONEY

Contrary to the implications of the Petitioner and amici, the decision in this case is of significance only to a very few AFDC recipients in Georgia. This decision only affects AFDC recipients who received lump sums of money, and after receiving undisputedly inadequate notices of termination, then appealed the decision within ten days so that they would continue to receive AFDC benefits. 45 C.F.R. § 205.10 (a)(6)(i). By contrast, the vast majority of recipients who received lump sums of money and received the inadequate notices were terminated, were assessed overpayments, and have already had these monies collected by the state.[2]

The sole remaining issue in this case is the State of Georgia's attempt to collect money from these very few AFDC recipients who received AFDC benefits pending their appeal. During the five years of this litigation, respondents have identified only seven AFDC recipients with lump sum penalties who were either named plaintiffs in the original action or whose files were examined in discovery. Petitioner did not identify any classmembers. During this litigation the State of Georgia was not ordered to specifically identify any other recipients who may have been affected because the state alleged it would have been too costly. Petitioner's Reply Br. at 2. As stated

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[2] Everyone agrees that, because of the Eleventh Amendment, the federal courts cannot order the State of Georgia to return these benefits to the AFDC recipients.

in respondents' Brief in Opposition to the Petition for Certiorari, the largest alleged AFDC overpayment identified was Marta Turner's $1,152.00.

Thus, these seven individuals appear to constitute the entire class of AFDC recipients in Georgia that would be affected by this Court's consideration of this case. No one has suggested that there will be any other individuals in the country directly affected by this ruling. While some of the states and the Solicitor General's Office have asked this Court to use its limited resources and time to expand and extrapolate legal principles, the number of people affected and the amounts of money at issue in this case are simply not worthy of the Court's time.

2. THE SCOPE OF THE *TURNER v. LEDBETTER* DECISION IS LIMITED TO ITS FACTS

The Court of Appeals for the Eleventh Circuit in *Turner v. Ledbetter*, 906 F.2d 606 (11th Cir. 1990), held that the district court did not abuse its discretion in fashioning relief for the violations of federal notice requirements by the State of Georgia. *Turner*, 906 F.2d at 609. The relief was closely tied to the distinct facts of this case: (1) the absence of even minimally adequate notice advising plaintiffs of the reason for their terminations, (2) the distinct importance of notice of a lump sum penalty so that the money received can be properly budgeted, and (3) a recipient's likely reliance on the old rule unless given adequate notice.

The district court found, and the Eleventh Circuit affirmed, that the notices of AFDC termination given by

the State of Georgia were inadequate.[3] The State of Georgia did not dispute or appeal this finding. None of the amici states attorneys general argue that it is the policy or practice of their states to provide inadequate AFDC lump sum termination notices. Yet, by insisting this case applies to them, they argue that if their states also have policies of providing inadequate lump sum penalty termination notices, recipients challenge the notices and prevail, and some of the recipients continue receiving benefits because of administrative appeals, states would be bound by *Turner v. Ledbetter*. The factual situation in *Turner* has not occurred previously and is not likely to repeat itself in the context of this now almost ten year old lump sum penalty regulation.

None of the dire predictions of the amici flow from this decision. The holding turns on the special nature of the change in law regarding the lump sum penalty rule and the special nature of the notice in this case. It is consistent with other cases where the circuit courts have upheld relief ordered by district courts when the state's procedures were held inadequate and terminations based on those procedures were nullified. *Buckanon v. Percy*, 708 F.2d 1209 (7th Cir. 1983), *cert. denied*, 465 U.S. 1025 (1984); *Kimble v. Solomon*, 599 F.2d 599 (4th Cir. 1979), *cert. denied sub nom. Buck v. Kimble*, 444 U.S. 950 (1979); and *Caldwell v. Wallace*, 755 F.2d 870 (11th Cir. 1985). The relief upheld

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[3] The trial court found no need to reach a constitutional question when it found the notice given here clearly violated the "substantive and regulatory notice provisions." Petition for Writ of Certiorari at 33a, Trial Court Order of June 24, 1987. 45 C.F.R. § 205.10(a)(4)(i)(A),(B).

in these particular cases has not affected the states' ability to collect overpayments in the AFDC programs or other public assistance programs, nor does *Turner* have such an effect.

3. THERE IS NO CONFLICT AMONG THE CIRCUITS ON THIS ISSUE

Recognizing that *Turner* is an isolated decision, unlikely to recur, presenting no conflict with any other decision by any other circuit court of appeals, amici attorneys general, nevertheless argue that there is a "conflict in principle" between this holding and two Ninth Circuit cases. *Turner* does not conflict in principle or otherwise with the circuit court cases cited, *Medberry v. Hegstrom*, 786 F.2d 1389 (9th Cir. 1986), and *Turner v. McMahon*, 830 F.2d 1003 (9th Cir. 1987), *cert. denied*, 488 U.S. 818 (1988).

Medberry v. Hegstrom, supra, challenged a policy of the State of Oregon that determined when the lump sum period of ineligibility should begin. The federal lump sum rule requires that recipients suffer a prospective period of ineligibility for AFDC benefits determined by looking at the size of the lump sum in relation to the state standard of need. The federal AFDC statute, 42 U.S.C. § 602(a)(17), states that the period of ineligibility runs from the time the lump sum is received. Oregon, however, in direct violation of federal regulations, delayed the implementation of the penalty until the lump sum was discovered by the agency or until all appeals were exhausted before beginning the ineligibility period. This policy hurt AFDC recipients because delaying the period of ineligibility until long after the lump sum was received

often meant that the family had already exhausted the lump sum. The court in *Medberry* ordered Oregon to begin the period of ineligibility from receipt of the lump sum and held that if benefits were improperly paid during the ineligibility period, they were to be recovered by normal overpayment methods. This was precisely the relief plaintiffs in *Medberry* requested because recovery was preferable to an ineligibility period with no funds.

The only issue in the *Medberry* case therefore was *when* the lump sum period of ineligibility began. This was a substantive legal question decided on the statutory language of the lump sum rule and the federal agency interpretation of an explicit federal rule. Plaintiffs in *Medberry* did not contend and the court did not hold that procedures for termination based on a lump sum payment were defective. Therefore, there was no basis for claiming that overpayments should not be recovered. Procedures used by the State of Oregon to terminate plaintiffs were *adequate* and plaintiffs did not claim otherwise. In contrast, *Turner* holds that where procedures for terminating AFDC benefits to recipients who received lump sums after 1981 were *inadequate*, a district court can hold that overpayments did not occur and nothing may be recovered. *Turner*, 906 F.2d at 609. The issue was never raised or addressed in *Medberry*, and there would have been no basis for doing so in that case.

The other case cited by amici is *Turner v. McMahon*, 830 F.2d 1003 (9th Cir. 1987). *Turner v. McMahon* addressed the issue of whether AFDC paid pursuant to an erroneous court order, later revised, can be recovered as an overpayment. The Ninth Circuit held that AFDC payments made to a class of recipients which are later

determined by a higher court to be erroneously paid are "overpayments" within the meaning of 42 U.S.C. § 602(a)(22) and therefore are subject to recovery. Again, the Ninth Circuit did not address the question of whether a district court could order a state to refrain from recovery of benefits paid pending an administrative hearing where statutory or constitutionally improper procedures were used to terminate an AFDC recipient's benefits. It is not inconsistent for the holding in *Turner v. McMahon* to exist alongside a holding that, although a state must recover AFDC paid pursuant to a court decision, which was subsequently overturned, a district court still can order a state to refrain from collecting benefits received by recipients who did not receive adequate notice of termination. The holdings in *Turner v. McMahon* and *Turner v. Ledbetter*, therefore, are different but not inconsistent.

Amici attorneys general also assert a conflict exists with *Rosas v. McMahon*, 700 F. Supp. 467 (N.D. Cal. 1988). There is no appellate decision because the case is still pending before the Court of Appeals for the Ninth Circuit, and, therefore, no conflict exists.

Critically, the difference between *Turner v. Ledbetter* and all of the cases cited by amici is that in all of the cases cited, the district courts found that an overpayment had occurred. In *Turner* the district court specifically held, and the Eleventh Circuit affirmed, that no overpayment of AFDC benefits occurred. *Turner*, 906 F.2d at 609. The district court considered that it was crucial for adequate notice to be provided at a time when recipients could have budgeted their funds to avoid undue hardship. Because no proper notice was provided, the court found

no overpayments existed. The State of Georgia did not appeal the court's finding that no overpayment occurred, but appealed to the Eleventh Circuit only on the issue of the injunction which barred the state from the collection of overpayments. See p. 1a, *infra*, Petitioner's Notice of Appeal. Accordingly, whether overpayments occurred within the meaning of 42 U.S.C. § 602(a)(22) is not before this Court.

4. CONCLUSION

In sum, the *Turner v. Ledbetter* decision affects a small number of AFDC recipient families in Georgia and involves a small amount of money. It is a narrow decision upholding district court relief in a unique situation unlikely to recur in the same form elsewhere in the country. Finally, respondents have shown that there is no conflict among the circuits on this issue. For these reasons respondents ask this Court to deny certiorari.

Respectfully submitted,

VICKY O. KIMBRELL

120 Ralph McGill Boulevard, NE
Box 64, Suite 1125
Atlanta, Georgia 30308
(404) 894-7707

NANCY R. LINDBLOOM
LISA J. KRISHER
PHYLLIS J. HOLMEN

161 Spring Street, NW
5th Floor
Atlanta, Georgia 30303
(404) 656-6021

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

MARTA O. TURNER, IRENE EDWARDS, and MARGIE RAY, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	:	CIVIL ACTION FILE NO.
Plaintiffs	:	
v.	:	C-86-199-HLM
JAMES G. LEDBETTER, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE GEORGIA DEPARTMENT OF HUMAN RESOURCES,	:	
Defendant	:	

NOTICE OF APPEAL

Notice is hereby given that James G. Ledbetter, in his official capacity as commissioner of the Georgia Department of Human Resources hereby appeals to the United States Court of Appeals for the Eleventh Circuit from that portion of the Judgment of the Honorable Harold L. Murphy, entered in this action on the 12th day of October, 1989, which enjoined the Defendant from the collection of overpayments as ordered in the Court's orders of March 30, 1989, and June 30, 1989.

This 20th day of October, 1989.

Respectfully submitted,

MICHAEL J. BOWERS
Attorney General

H. PERRY MICHAEL
First Assistant Attorney General

STEPHANIE B. MANIS
Deputy Attorney General

WILLIAM C. JOY
Senior Assistant Attorney General

MARY FOIL RUSSELL
Assistant Attorney General